

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALBERT ELDER #178185,

Petitioner,

v.

MARY BERGHUIS,

Respondent.

Case No. 1:05-cv-780

HONORABLE PAUL L. MALONEY

Magistrate Judge Ellen S. Carmody

AMENDED
Opinion and Order

**Sustaining the Respondent's Objections Regarding *Batson* Claim's Lack of Merit;
Rejecting the R&R as to *Batson* Claim;**

Accepting the R&R Without Objection as to All Other Claims and Issues;

**Dismissing the Habeas Corpus Petition for Lack of Merit;
Issuing a Certificate of Appealability as to the *Batson* Claim;
Declining to Issue a Certificate of Appealability as to Other Claims or Issues;
Terminating the Case**

Represented by counsel Terry Nolan ("Nolan"), Albert Norrese James Elder ("Elder") pled *nolo contendere* to two drug crimes – PWID 50 grams to less than 225 grams of cocaine and PWID marijuana – in exchange for dismissal of a charge of possession of a firearm during the commission of a felony. On the date scheduled for sentencing in July 2002, however, counsel Nolan failed to appear, and the court learned the next day that Nolan was suffering from "severe depression" and feared he was suffering a "nervous breakdown." The trial court recalled Nolan engaging in